

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

* * * * *

ROBIN MCCARTHY-STANCAVAGE, *

on behalf of A.S., a minor child, *

Petitioner, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

* * * * *

No. 14-1117V

Special Master Christian J. Moran

Filed: November 24, 2015

Stipulation; influenza (“flu”)

vaccine; small fiber neuropathy;

chronic pain syndrome.

Diana Stadelnikas Sedar, Maglio, Christopher & Toale, PA, Sarasota, FL, for
Petitioner;

Lara A. Englund, United States Dep’t of Justice, Washington, DC, for Respondent.

UNPUBLISHED DECISION¹

On November 19, 2015, respondent filed a joint stipulation concerning the petition for compensation filed by Robin McCarthy-Stancavage, on behalf of her son, A.S., on November 17, 2014. In her petition, Ms. McCarthy-Stancavage alleged that the influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. §100.3(a), and which A.S. received on or about December 7, 2011, caused him to suffer small fiber neuropathy and chronic pain syndrome, and that A.S. experienced residual effects of these injuries for more than six months. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of A.S. as a result of his condition.

¹ The E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the party has 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Respondent denies that the flu vaccine caused any of A.S.'s, injuries or his current condition.

Nevertheless, the parties agree to the joint stipulation, attached hereto as "Appendix A." The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

A. A lump sum of \$4,737.16, which amount represents reimbursement of a lien for services rendered on behalf of A.S., in the form of a check payable jointly to petitioner and

**Eugene A. Seidel
Trustee for Johns Hopkins Health Care, LLC
107 Sudbrook Lane
Baltimore, MD 21208**

Petitioner agrees to endorse this check to the Eugene A. Seidel, Trustee for Johns Hopkins Health Care, LLC.

B. A lump sum of \$16,000.00, in the form of a check payable to petitioner, Robin McCarthy-Stancavage;

C. A lump sum of \$89,000.00, in the form of a check payable to A.S. on or after January 7, 2016.²

The amounts set forth in sections a, b, and c represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case14-1117V according to this decision and the attached stipulation.³

² A.S.'s date of birth is January 7, 1998.

³ Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

Any questions may be directed to my law clerk, Dan Hoffman, at (202) 357-6360.

IT IS SO ORDERED.

s/ Christian J. Moran
Christian J. Moran
Special Master

- IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

6. Respondent denies that the flu vaccine caused any of A.S.'s injuries or his current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$4,737.16, which amount represents reimbursement of a lien for services rendered on behalf of A.S., in the form of a check payable jointly to petitioner and

Eugene A. Seidel
Trustee for Johns Hopkins Health Care, LLC
107 Sudbrook Lane
Baltimore, MD 21208

Petitioner agrees to endorse this check to the Eugene A. Seidel, Trustee for Johns Hopkins Health Care, LLC.

- b. A lump sum of \$16,000.00 in the form of a check payable to petitioner.
- c. A lump sum of \$89,000.00 in the form of a check payable to A.S. on or after January 7, 2016.¹

The amounts set forth in paragraphs 8.a., 8.b. and 8.c. represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before

¹ A.S.'s date of birth is January 7, 1998.

the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a pre-paid basis.

11. Payments made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as legal representative of A.S., and on behalf of herself, A.S., and his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq.,

on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of A.S. resulting from, or alleged to have resulted from, the flu vaccination administered on or about December 7, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about November 17, 2014, in the United States Court of Federal Claims as petition No. 14-1117V.

14. If A.S. should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

15. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

16. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

17. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused A.S. to suffer small fiber neuropathy or chronic pain syndrome, or any other injury or his current condition.

18. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns as legal representatives of A.S.

END OF STIPULATION

/

/

/

/

/

/

/


/

Respectfully submitted,

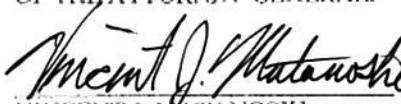
PETITIONER:


ROBIN MCCARTHY STANCAVAGE

ATTORNEY OF RECORD FOR
PETITIONER:


DIANA L. STADELNICK, SEDAR
MAGLIO, CHRISTOPHER & TOALE, PA
1605 Main Street, Suite 710
Sarasota, FL 34236
(941) 952-5242

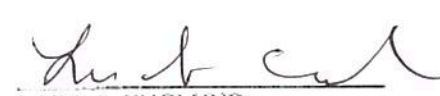
AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


VINCENT J. MATANOSKI
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:


A. MELISSA HOUSTON, M.D., M.P.H., FAAP
Director, Division of
Injury Compensation Programs
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 11C-26
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:


LARA A. ENGLUND
Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 307-3013

Dated: 11/19/15